

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

ANGELA SAMPLE and DWAYNE SAMPLE,

Plaintiffs,

v.

No. Civ. 1:23-865 DHU/KRS

ASHFORD TRS SANTA FE, LLC,

Defendant.

**ORDER GRANTING DEFENDANT’S MOTION TO COMPEL  
PLAINTIFFS’ DISCOVERY RESPONSES**

THIS MATTER is before the Court on Defendant Ashford TRS Santa Fe, LLC’s Motion To Compel Plaintiffs’ Discovery Responses [39], filed on October 4, 2024 (“Motion”). For the reasons discussed below, the Motion is granted.

**I. Motion to Compel Discovery Responses.**

The Motion seeks to compel responses to Defendant’s First Set of Interrogatories and Requests for Production (“Defendant’s Discovery”), which Defendant represents were served on Plaintiffs on August 7, 2024. Pursuant to Fed. R. Civ. P. 33 and Fed. R. Civ. P. 34, Plaintiffs’ responses to Defendant’s Discovery were due on September 7, 2024. Defendants state that no responses had been received as of the filing of the Motion on October 4, 2024. The Motion represents that Defendant’s counsel “sent a good faith correspondence to Plaintiffs’ counsel pursuant to Fed. R. Civ. P. 37” on September 11, 2024, regarding the missing responses, but that Plaintiffs never responded “by the appointed deadline of September 18, 2024.” The Motion states that, on September 19, 2024, Defendant’s counsel “sent a second good faith correspondence to Plaintiffs’ counsel pursuant to Fed. R. Civ. P. 37,” but that no response to that correspondence was received “by the appointed deadline September 20, 2024.”

Plaintiffs' response to Defendant's Motion was due on or before October 18, 2024. *See* D.N.M. LR-Civ. 7.4(a). Plaintiffs failed to file any response or request for an extension by that date. Plaintiffs therefore are deemed to have consented to the Motion. *See* D.N.M. LR-Civ. 7.1(b). ("The failure of a party to file and serve a response in opposition to a motion within the time prescribed for doing so constitutes consent to grant the motion."). Accordingly, the Motion will be granted.

## **II. Attorneys' Fees and Costs**

Defendant asks the Court to award its attorneys' fees and costs incurred in bringing the Motion. (Doc. 39 at 4-5). Defendant does not cite any rule or present any legal argument for the requested fees and costs. Presumably, however, Defendant is relying on Federal Rule of Civil Procedure 37(a), which provides that if a motion for an order compelling discovery is granted "the court must, after giving an opportunity to be heard, require the party ... whose conduct necessitated the motion ... to pay the movant's reasonable expenses incurred in making the motion, including attorney's fees." Fed. R. Civ. P. 37(a)(5). There are exceptions to the otherwise mandatory payment of fees and expenses, including when "other circumstances make an award of expenses unjust." *Id.*

Plaintiffs have been completely unresponsive to (1) Defendant's Discovery; (2) Defendant's first attempt to confer in good faith on September 11, 2024; (3) Defendant's second attempt to confer in good faith on September 19, 2024; and (4) Defendant's motion to compel filed on October 4, 2024. Plaintiffs have had the opportunity to respond to Defendant's request for fees and expenses, but again they have failed to file any response. Accordingly, pursuant to D.N.M. LR-Civ. 7.1(b), Plaintiffs have consented to payment of Defendant's fees and costs associated with the instant Motion.

IT IS THEREFORE ORDERED that:

1. Defendant Ashford TRS Santa Fe, LLC's Motion To Compel Plaintiffs' Discovery Responses [39] is **GRANTED**.

2. Plaintiffs are **ORDERED** to respond to Defendant's Discovery on or before **November 15, 2024**.

3. Defendant is awarded attorneys' fees and costs incurred in the bringing of the current Motion. Defendant shall file an affidavit itemizing its reasonable fees and expenses for the Court's consideration by **November 8, 2024**. If Plaintiffs wish to contest the reasonableness of any expenses claimed by Defendant, their objections shall be due within **five (5) days** of Defendant filing its affidavit.

IT IS SO ORDERED this 1st day of November, 2024.



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KEVIN R. SWEAZEA  
UNITED STATES MAGISTRATE JUDGE